

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

In re: SCANA CORPORATION PUBLIC
SHAREHOLDER LITIGATION

C.A. No. 3:18-cv-00505-MBS

VTC

DEPOSITION OF: MAYBANK HAGOOD

DATE: April 7, 2021

TIME: 9:43 a.m.

LOCATION: 205 King Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY:

Roxanne Easterwood, RPR

Job No. 4519243

1 normal board meeting.

2 Q. Okay. So you would have had a
3 normal -- a normal board meeting, and there would
4 have been some follow-up for -- for each of these
5 two meetings?

6 A. Yes.

7 Q. Do you recall what was discussed in
8 the follow-up for these meetings?

9 A. Well, there were several reasons for
10 meeting.

11 Q. Okay.

12 A. We felt strongly that even though we
13 had been in this project together, been a
14 45 percent owner, as a 55 percent owner, that
15 there had been, you know, very little
16 communication actually between the two boards and
17 that everything was being communicated to and from
18 the executive management. So we thought it would
19 be a really good idea for the two boards to meet
20 and open up a channel of communication at the
21 board level. So, you know, that was the -- what I
22 would say is sort of the overarching purpose,
23 particularly of the first meeting, and -- and
24 really the second one is a follow-up.

25 The March meeting there were -- I

1 believe there was a presentation made on the
2 findings of the Bechtel report, and I believe
3 there were -- there was a discussion around at
4 that point, given the fixed-price option, you
5 know, what aspects of the Bechtel report were
6 still relevant since so many of the issues had
7 been resolved through the fixed-price option with
8 the consortium.

9 Q. You said this -- this took place at
10 which meeting?

11 A. I believe that was the March meeting.

12 Q. Okay. And what -- what occurred at
13 the -- the June meeting, then?

14 A. The June meeting was more so follow-up
15 where we -- where we were on -- the -- the main
16 thing that -- that both boards felt there was a
17 recommendation in the report, that there would be
18 a construction oversight review board that would
19 be put together of independent, you know, experts
20 in the construction industry that had no
21 involvement with the project or with either
22 company, and that was agreed to in March, and so
23 there was some follow-up on that at the June
24 meeting.

25 Q. And was that -- was that board set up?

1 Q. Were there other things, other reasons
2 for the report being undertaken? I mean, that you
3 were being told by Mr. Marsh and Mr. Byrne?

4 A. There was a desire on Santee's part to
5 have a -- have a third party look at this, and
6 they had a specific desire for Bechtel.

7 Q. Why -- why were you told that Santee
8 had a desire to have a third party to look at --
9 look at this, as you said?

10 A. At that point, before the Bechtel
11 report started, there were -- there were some
12 schedule delays and cost overruns, and there was,
13 you know, discussions around the fact that things
14 were going to have to change to get back on -- you
15 know, to be able to hit the schedules, and so I
16 think that was the other primary purpose when they
17 started it.

18 Q. Okay. So you were told prior to the
19 time the Bechtel investigation started that there
20 was a concern on Santee Cooper's part about
21 schedule delays and cost overruns, right?

22 A. And -- and SCE&G as well.

23 Q. So, and can I -- can I say SCANA?

24 A. Sure.

25 Q. Sure. It's only because my local

1 power company is SDG&E?

2 A. Is that right?

3 Q. So I would constantly be stepping over
4 it.

5 A. Okay.

6 Q. And so SCANA was also concerned about
7 schedule delays and cost overruns that -- and that
8 prompted the Bechtel report, right?

9 A. SCANA's primary purpose was for --
10 as -- as I remember it and was told, was for the
11 potential protection if we ever got into
12 litigation with Westinghouse.

13 Q. Okay. But -- but you were told by
14 who, was it Mr. Marsh or Mr. Byrne, that there
15 were some concerns about schedule delays and cost
16 overruns?

17 A. Yes.

18 Q. And that was prior to the time the
19 Bechtel investigation was undertaken, right?

20 A. Yeah. I mean, they didn't -- yes.

21 Q. Okay. Was there -- what were you
22 told? Was Santee Cooper concerned, or that
23 Mr. Marsh and Mr. Byrne, did they -- they also
24 have concerns about schedule delays and cost
25 overruns?

1 Q. Well, but -- but you -- you already
2 said the litigation had already sort of passed by
3 and there was no reason for -- for -- for that to
4 be an issue anymore. That's what you testified
5 to.

6 A. Could I clarify that?

7 Q. No.

8 A. Okay.

9 Q. So did anyone on the board ask for the
10 Bechtel report?

11 A. I'm not aware of anybody that asked
12 for the report.

13 Q. So did Kevin Marsh volunteer to
14 provide it to the board?

15 A. We went through the recommendations of
16 the report. They reported those to us. We had a
17 joint meeting with Santee, and -- and I mentioned
18 to you, earlier in March, and we looked at the key
19 recommendations. We were told that a number of
20 the recommendations were much -- you know, I think
21 they -- I can't remember the total number.

22 There was over 70 of them, that a
23 number of them had to do with issues that would go
24 to Fluor. Some were issues that would be
25 addressed by Santee and SCANA, and the main one

1 was doing the -- the CORB.

2 Q. Okay. Well, let's turn over to Page 7
3 of Exhibit 1. So Page 7 discusses a March 21,
4 2016 Santee Cooper board meeting with SCE&G
5 management, with SCANA board in attendance. And
6 you were at that meeting, right?

7 A. Yes.

8 Q. And it says, as you've already
9 testified to, that they -- you discussed the
10 Bechtel report, Santee Cooper's recommendations,
11 and then Marsh's commitments to set up CORB,
12 right?

13 A. Could you repeat that?

14 Q. Well, I was just sort of paraphrasing
15 what the paragraph says.

16 A. Yeah.

17 Q. You said -- it says it discussed the
18 Bechtel report, and you also said that you -- that
19 you discussed Santee Cooper's recommendations,
20 right?

21 MR. GREENE: Objection to form.

22 BY MR. WISSBROECKER:

23 Q. Or was it Bechtel's recommendation?

24 A. It was the Bechtel recommendations.

25 Q. Okay. And you said there was how many

1 coming on site, and in our view we had
2 significantly improved the situation and moved to
3 a -- you know, a better arrangement than we had
4 before we even initiated the Bechtel report.

5 Q. Okay. Let me -- let me just -- just
6 follow up on that. Okay. One of which is --
7 is -- so by testifying that Mr. Marsh informed you
8 that the scheduling just weren't credible, you --
9 you're admitting to the fact that Mr. Marsh told
10 you that there were scheduling issues identified
11 in the Bechtel report, right?

12 A. He mentioned that they had a schedule.

13 Q. That they -- that they -- and did
14 he -- did he mention that those scheduling
15 proposals were not credible, right? I mean,
16 what -- what -- what does that mean?

17 A. He stated that there's -- they base it
18 on assumptions and not on the actual factual cost
19 assessments of the per-unit cost to build the
20 plant.

21 Q. Okay. And so -- so he made you aware
22 of -- that Bechtel had identified scheduling
23 issues, but then he told you that they weren't
24 credible, right?

25 A. Yes. I -- I just don't know what --

1 when that happened --

2 Q. What was it --

3 A. -- in the sequence.

4 Q. Okay. So, but was it around about the
5 same time you met with the Santee board or before?

6 A. No, because at that point we were
7 completely focussed on trying to initiate and
8 decide on whether we were going to exercise the
9 fixed-price contract and what were the components
10 of the Bechtel report that both Santee and SCE&G
11 felt like were appropriate to implement.

12 Q. Okay. So I'm going to look at -- view
13 the timing here.

14 A. Right.

15 Q. Okay. So March 2016 the board met,
16 and you -- you have said that the Bechtel report
17 wasn't credible because, one, they only spent 60
18 days, and it was finished two months after the
19 fixed-price contract was entered into, right?

20 A. It was the -- yeah. Yeah, I don't
21 know when it was -- the -- the report was
22 submitted, yes.

23 Q. So they conducted the investigation
24 over a 60-day period?

25 A. Right.

1 manage the project.

2 Q. So no third party come in for
3 construction oversight?

4 A. That's my recollection.

5 Q. What about the -- the hiring of
6 bankruptcy counsel?

7 A. So they had agreed at that point.
8 They -- I think SCANA admitted that they had taken
9 longer than they had hoped to to find the right
10 bankruptcy counsel, and they agreed -- I can't
11 remember the name of the firm. It was a firm out
12 of -- I think it was out of Chicago that
13 specialized in bankruptcy.

14 Q. Was it Paul Singer?

15 A. I think that's right. I'm -- I'm not
16 sure, but I think that sounds right. And that
17 they -- so they agreed to that, and I believe by
18 the time the December 5th meeting had happened
19 they had that counsel on board.

20 Q. But both parties had agreed to -- to
21 counsel at that point?

22 A. I believe so.

23 Q. Okay. And -- and you -- you reviewed
24 this letter, so you knew that Mr. Carter was
25 concerned that we must anticipate Westinghouse

1 having financial difficulty completing the project
2 particularly in a timely manner. Do you see that?

3 A. Where are you?

4 Q. So under the heading on the -- this is
5 the second page of the document Bates stamped
6 SCDOJ 1535055.

7 A. Yeah.

8 Q. Yeah. We already talked about a
9 bankruptcy expertise?

10 A. Right.

11 Q. And then he says: Regrettably, we
12 must anticipate Westinghouse WEC having
13 difficulty -- financial difficulty completing the
14 project particularly in a timely manner. Do you
15 see that reference?

16 A. Which paragraph is that?

17 Q. The one that says bankruptcy counsel.

18 A. Yeah. Okay. Okay. Yeah. Got it.
19 Okay.

20 Q. And so you were aware at least as of
21 November 30th, 2016 that Mr. Carter was concerned
22 that there would be issues with Westinghouse
23 having the ability to complete the project in a
24 timely manner?

25 A. Yes.

1 Q. Did you discuss that issue with
2 Mr. Marsh?

3 A. Mr. Marsh discussed that with the
4 overall board.

5 Q. And in -- in November of 2016?

6 A. I don't remember exactly when. I know
7 that he had meetings with Westinghouse in
8 December. I know that he was trying to get a
9 meeting set up with the chairman of Toshiba.
10 Offered to go over to Japan to have that meeting.
11 And so these were all issues that we were
12 concerned about, too.

13 Q. And what did -- what -- what was --
14 what were the issues with the timing that were
15 articulated? What -- what -- what timeframe
16 was -- was -- was being sort of thrown out there
17 as -- as the delay?

18 A. We were -- I don't recall that. I
19 just know that we were given assurance that they
20 were still -- they were still on the target at
21 that time. You know, that the project had slipped
22 a couple of times over the course of eight to ten
23 years, but that at that point in December '16,
24 '17 -- and Jan- -- and early '17, you know, we
25 were told that they were standing by the

1 Q. Mr. Hagood, I assume you had a chance
2 to review this entire document?

3 A. Yes.

4 Q. Did you discuss this with your
5 attorney at all?

6 A. No.

7 Q. Okay. So this is an earnings call
8 conference call transcript dated February 16,
9 2017. This is, okay, not quite -- a couple of
10 months after your meeting with the -- almost,
11 yeah, two and a half months after your meeting
12 with the Santee board, right?

13 A. The one where Kevin and Steve and I
14 went to?

15 Q. Yes.

16 A. Yes.

17 Q. Where you -- where you -- where you
18 had discussed the potential of Westinghouse and
19 Toshiba bankruptcy issues, right?

20 MR. GREENE: Objection to form.

21 THE WITNESS: We discussed obtaining
22 bankruptcy counsel.

23 BY MR. WISSBROECKER:

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. So on this call, on the second page of the transcript, which is Bates stamped SCDOJ 111, Kevin Marsh references the fact that: Analysts on the call share with us probably want to learn more about the -- the status of Westinghouse and the impact of Toshiba's financial challenges on our new nuclear construction project.

Do you see that paragraph down there?

A. Yes.

Q. All right. And -- and when you -- when you reviewed this, did you happen to see anywhere in this document where Kevin Marsh disclosed that SCANA hired bankruptcy counsel and was also looking at the possibility of Westinghouse going bankrupt?

A. In this document?

Q. Yes.

A. No.

1 Q. Okay. Did the board discuss whether
2 or not Mr. Marsh should be disclosing the extent
3 of Westinghouse's financial challenges?

4 MR. GREENE: Objection to form.

5 THE WITNESS: Toshiba -- Westinghouse
6 or Toshiba?

7 BY MR. WISSBROECKER:

8 Q. Oh, Westinghouse.

9 A. Westinghouse. My recollection is that
10 the primary discussions we had were around
11 Toshiba's financial difficulties as stated being a
12 public company that was out there in -- in the
13 press. I -- I don't recall conversations around
14 their subsidiary Westinghouse.

15 Q. Yeah, but you were aware that -- that
16 there was a concern of Westinghouse's potential
17 bankruptcy, though, right?

18 MR. GREENE: Objection to form.

19 THE WITNESS: There was preparation as
20 a contingency.

21 BY MR. WISSBROECKER:

22 Q. And did the board discuss whether or
23 not that -- that fact should be disclosed to
24 shareholders?

25 A. I don't recall if we discussed it.

1 MR. GREENE: Middle of the page.

2 THE WITNESS: Middle. Yes. Yes. Yes.
3 Got it.

4 BY MR. WISSBROECKER:

5 Q. Again --

6 A. Yeah, got it.

7 Q. And, again, no -- no -- no disclosure
8 that you saw in here about SCANA's awareness of
9 the potential bankruptcy issues Westinghouse had?

10 A. No.

11 Q. Are you aware that the -- the -- the
12 charges against Kevin Marsh involved his failure
13 to disclose information that he had in December
14 about the potential for Westinghouse to -- to go
15 bankrupt on -- on these conference calls?

16 A. I read that in the paper when that was
17 submitted, yes.

18 Q. And you -- did you -- did you see it
19 in here when you reviewed this -- this document
20 any discussion of other concerns that SCANA may
21 have about construction delays that were not
22 associated with the Westinghouse potential
23 bankruptcy?

24 A. Do I see them -- say that one more
25 time.

1 you agree then that Mr. Byrne gave some
2 assurances, some reassurances to -- to the market
3 on this call that -- that SCANA would be able to
4 finish these projects on a -- as -- as -- as
5 already contemplated?

6 A. I read it that they disclosed the new
7 dates from Westinghouse and that they were
8 reviewing the assumptions that Westinghouse made.
9 They hadn't had a chance -- they had just gotten
10 them. They hadn't had a chance to -- to confirm
11 them at that point.

12 Q. That he didn't -- Mr. -- Mr. --
13 Mr. Byrne didn't articulate any specific concerns
14 that they wouldn't make the deadlines, though,
15 right?

16 A. I don't recall that in here. I don't
17 remember seeing anything specific.

18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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11 BY MR. WISSBROECKER:

12 Q. And then turning over to Page 23, you
13 see on this page Mr. Marsh is asked to walk --
14 asked by someone named Travis Miller, walk me
15 through a worst-case scenario on the nuclear side
16 might look like if you were to get some kind of
17 stranded cost-type situation, and Mr. Marsh took
18 some -- talks later on: I kind of look at the
19 last case option, the abandonment provisions of
20 the BLRA -- and they discuss a little bit more on
21 that, the next page, 24, about the abandonment
22 clause and the abandonment provisions of BLRA. Do
23 you see that discussion?

24 A. Yes.

25 Q. Do you see anywhere in here where

1 that -- that you maybe shouldn't have voted to
2 issue those dividends knowing that the money that
3 you got to issue them came from rate payors to pay
4 for the nuclear power plant that was now
5 abandoned?

6 A. You know, my concern was over the
7 whole project having failed and every aspect of
8 it.

9 Q. And -- and then the -- the money that
10 it cost rate payors, right?

11 A. There's been a significant rebate to
12 the customers that came after the merger.

13 Q. But not all? They're not getting all
14 of their money back, correct?

15 A. They did not. You're right.

16 Q. And were you aware that -- that part
17 of the -- the scheme -- the alleged scheme was
18 Mr. Marsh hiding information that was in the --
19 the Bechtel report about the delays in the nuclear
20 project?

21 A. I was not.

22 Q. Well, you're aware of that now,
23 though, right, because you have read this
24 information?

25 A. Yes.

1 Q. And were you aware before you read
2 this information that that was part of the charges
3 against Mr. Marsh?

4 A. No.

5 Q. Did -- so today is the first time that
6 you learned that part of the charges against
7 Mr. Marsh involved him hiding details of the
8 Bechtel report?

9 A. That -- that is -- yes.

10 Q. So your testimony is that up until
11 today you had no understanding that Mr. Marsh was
12 being charged with hiding details of the Bechtel
13 report?

14 A. I was not aware of that.

15 Q. Do you -- when you had your interview
16 with the -- the FBI, did they ask you if you were
17 aware of the Bechtel report?

18 A. Yes.

19 Q. What -- what -- what did you tell
20 them?

21 A. That was a pretty lengthy
22 conversation.

23 Q. Did you -- go ahead.

24 A. I don't remember the specific
25 questions. That was over a year ago. But it was

1 A. Okay. So repeat your question.

2 MR. WISSBROECKER: I don't remember.
3 What was my question?

4 (The record was read, as requested.)

5 THE WITNESS: Yes.

6 BY MR. WISSBROECKER:

7 Q. So including where it says: Bechtel
8 found the nuclear project to be significantly
9 off -- off schedule and over budget. Members of
10 the conspiracy never provided this information to
11 the regulatory agencies.

12 And then in K: Part of the scheme was
13 that the conspirators buried the Bechtel report
14 and the information contained wherein with
15 disingenuous representations of attorney-client
16 privilege. Do you see that reference?

17 A. Yes, I do see that reference.

18 Q. So you now understand that part of the
19 charges against Mr. Marsh were him burying details
20 of the Bechtel report that should have been
21 disclosed to regulators and shareholders?

22 A. Yes.

23 Q. On Page 10 of the information there is
24 a section called Overt Acts.

25 A. Yes.

1 Q. And it states, among other things: In
2 the furtherance of the conspiracy, the defendant,
3 Kevin Marsh, committed the following overt act in
4 the District of South Carolina, that on or about
5 December 27, 2016 Mr. Marsh received a
6 confidential telephone briefing from senior
7 Westinghouse officials during which those
8 officials indicated that the cost to complete the
9 new units would be significantly higher than
10 expected, and that he also received briefing from
11 a senior Toshiba official indicating that Toshiba
12 could not absorb the financial hit suggested by
13 new estimates from Westinghouse's subcontractor,
14 and that this led Mr. Marsh to believe there
15 existed a heightened risk of further construction
16 delays.

17 Do you see that -- those -- that
18 discussion?

19 A. I do.

20 Q. Were you -- were you involved in those
21 telephone calls with Westinghouse?

22 A. No.

23 Q. Were you aware that -- that Mr. Marsh
24 had been informed by Toshiba that it could not
25 absorb the financial hit caused by the new

1 estimates?

2 A. No. In fact, we were led to the
3 contrary.

4 Q. And you were led to the contrary by
5 who?

6 A. By Kevin Marsh.

7 Q. So Kevin had the conversation but led
8 you -- well, by the -- to the contrary, what do
9 you mean? What was the contrary?

10 A. Conversations in January of this
11 year -- of, I guess, the next year, 2017, that
12 recommitted to the dates and recommitted to the
13 costs by Toshiba and Westinghouse.

14 Q. And when did you learn that those
15 statements were false?

16 A. The -- the statements that he made?

17 Q. Right.

18 A. Reading this.

19 Q. So just today reading this or before
20 reading? Any -- any time before today did you
21 learn that those statements were false?

22 A. I mean, this was in the paper. Yeah.

23 Q. Okay. So you read it in the paper?

24 A. Yes.

25 Q. And you read a summary of it?

1 A. Yeah.

2 Q. When was that? When did you first
3 learn that?

4 A. When he first -- I guess the --
5 whenever he -- they announced that he was going to
6 plead guilty and it hit the paper. They -- was
7 that last fall? Was that -- was that last fall?

8 Q. When he was -- when he was officially
9 charged and -- and pled? He didn't plead --

10 A. Yeah, he pled -- he pled recently, but
11 they -- there was -- whenever that was, because
12 there was a fair amount in the paper that -- that
13 gave some of these terms here.

14 Q. All right. Well, let me -- I'm -- I'm
15 going to give you a document we'll mark as
16 Exhibit 9.

17 MR. WISSBROECKER: And this one is
18 internal 4, Teo.

19 (Exhibit 9, Email Correspondence, re:
20 Updates, Bates Aliff SCANABOD 2046-2047, marked
21 for identification.)

22 THE WITNESS: Okay.

23 BY MR. WISSBROECKER:

24 [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

24 Q. And then -- and then in the transcript
25 that we looked at also misled the market for the

1 same -- stating the same things, right, that
2 Westinghouse received a plan to complete the
3 project?

4 A. What I don't understand is statements
5 made right before the -- the financial conference
6 call, earnings release conference call, that were
7 coming purportedly from Toshiba and Westinghouse
8 on their commitment.

9 Q. Purportedly, right. So, but -- but --
10 but -- but according to the information, there was
11 different information that Mr. Marsh had from
12 Toshiba and Westinghouse?

13 A. Apparently so, yes.

14 Q. So regardless of what Westinghouse and
15 Toshiba were telling the market, I guess they were
16 maybe also engaged in the same level of deception
17 as Mr. Marsh maybe, right?

18 A. Possibly.

19 Q. Yeah. But you -- you -- you -- you
20 would agree that Mr. Marsh was deceiving you based
21 on information that he admitted that he had about
22 the likelihood that these projects would be
23 completed?

24 A. That information was never given to
25 us.

1 Q. Okay. But he -- instead he told you
2 that they planned to complete the projects, right?

3 A. Yes.

4 MR. WISSBROECKER: I'm going to mark
5 this as Exhibit 10. You would think the heavier
6 ones would fly over.

7 THE WITNESS: I would.

8 MR. DOREMUS: Would you mind calling
9 out the number, please?

10 MR. WISSBROECKER: Yeah, sorry. The
11 internal number is 10.

12 (Exhibit 10, USA v. Kevin Marsh Change
13 of Plea Hearing Transcript, no Bates, marked for
14 identification.)

15 THE WITNESS: Is one of these federal
16 and one of these state? Is that the difference
17 between 8 and 10?

18 BY MR. WISSBROECKER:

19 Q. No, I don't think so. No. The one is
20 an information charging --

21 A. Okay.

22 Q. -- charging statement, and this one is
23 his -- his guilty plea, when he had originally
24 pled not guilty, I guess. I don't have that, but
25 he changed his plea to guilty here.

1 bankruptcy that were a problem for the company
2 still that led to the delays in the project?

3 A. I -- I interpret your question,
4 because I hadn't seen the Bechtel report, that
5 there might have been differences between the
6 Bechtel report and the work that was being done in
7 July of 2017. Is that what you're asking?

8 Q. No. No. Well, because -- well --
9 the -- so is it your -- your testimony was High
10 Bridge Associates was brought in to address issues
11 specifically with -- with the Westinghouse
12 bankruptcy that caused delays or --

13 A. No. We were trying to get an accurate
14 understanding post filing by Westinghouse and the
15 reality that Westinghouse was no longer going to
16 be in charge of the project that if we either took
17 the project over ourselves, with Santee, whether
18 we brought in a new engineer to work with -- with
19 Fluor, what actually were -- based on the
20 information that we were provided -- finally got
21 from Westinghouse, what would be the actual cost
22 in scheduling.

23 Q. Okay. So -- so -- so let me ask a
24 different question then. So -- so did you come to
25 understand that the -- the costing -- the cost

1 overruns, scheduling issues were attributable just
2 to Westinghouse bankruptcy, or were they
3 preexisting issues?

4 A. It was the first time that we actually
5 had the hard data from Westinghouse to be able to
6 assess it.

7 Q. And did you -- were you able to assess
8 that those issues were preexisting prior to the
9 bankruptcy?

10 A. Yes.

11 Q. Okay. And did you -- all right. So
12 these -- these were -- these were concerns that
13 you were unaware of up until this in- -- this
14 information was provided to the board, right?

15 A. What concerns?

16 Q. Concerns about costing and the
17 scheduling issues that -- that you were made aware
18 of as a result of this process?

19 A. Well, I think you could see from even
20 that the -- the analyst conference call that
21 scheduling and costs has been an issue that has
22 been top of mind for everybody for a long period
23 of time.

24 Q. But -- but -- but -- but Mr. Marsh was
25 not providing that information to the board,

1 right, and the market?

2 A. The information from the December
3 meeting?

4 Q. Well, the information in the Bechtel
5 report that -- that he's accused of -- of
6 withholding from -- from regulators and
7 shareholders. I guess I'm just trying to
8 understand. So you've identified, you know, we
9 had some concerns about cost overruns and delays;
10 they weren't just associated with the Westinghouse
11 bankruptcy; the market was aware that there were
12 some. And I'm -- my question is they -- were --
13 were these costs -- cost overruns and scheduling,
14 were these things that has -- that had been sort
15 of withheld from -- from the board up until that
16 point?

17 A. Every board meeting we had, we had
18 updates around, you know, productivity ratios, you
19 know, where we were. Very -- a very similar type
20 of presentation as Steve Byrne made on that
21 February analyst call where he went through
22 pictures, diagrams, the placement of different --
23 because it was a component manufacturing facility.

24 So that long-term schedule and where
25 we were versus the actual placement of each of the

1 components was a very typical way that we talked
2 about this.

3 Q. But did you have all of the
4 information as a board that -- that -- that came
5 to light with respect to the extensive delays that
6 you now knew about?

7 A. No.

8 Q. Okay. So this is -- a lot of that
9 information was not available to you. So you may
10 have had some discussions at board meetings, but
11 it did not include the full scope of the
12 information, which eventually led to the
13 significant delays, right?

14 I mean, because if you look at Page 14
15 of the document, completion of Unit 2 is now
16 December '22, and Unit 3 is now November 2024,
17 2022 and 2024?

18 A. Right.

19 Q. Up until that point you believed that
20 the project would still be completed by 2019 and
21 2020, right?

22 A. That's what we were being told.

23 Q. So you had new information that came
24 to light post Westinghouse bankruptcy that you
25 were now made aware of these extensive further

1 delays that were going to outlive the project,
2 right?

3 A. Yes.

4 Q. And those delays were not just ones
5 because the bankruptcy occurred, right?

6 A. Yes.

7 Q. So Page 30 of the document, final
8 conclusion and recommendation. So it was at this
9 meeting that the board ultimately concluded that
10 it was time to abandon the nuclear project?

11 A. It was -- I believe -- is this -- you
12 said this was on the 25 -- the 25th. I believe
13 we -- we didn't take action at this meeting.

14 Q. But this was --

15 A. This -- this -- this was the
16 recommendation that was made to us at that point.

17 Q. All right. And was there any
18 discussion with the fact that the board didn't
19 have or some information was withheld from the
20 board that now was bringing this to a reality?

21 A. We were told throughout the course of
22 March until July that the team was analyzing the
23 information and that -- that we would be presented
24 the information.

25 Q. All right. When you were presented

1 Q. Well, what was Project Sedona in late
2 2016/early 2017?

3 A. My recollection of Project Sedona at
4 that point was we decided to engage Morgan Stanley
5 and RBC to begin the process of advising the board
6 on strategic -- the market and strategic
7 alternatives that may be out there for us.

8 Q. Potentially selling the company?

9 A. Yes, and just we -- we started by
10 engaging them in that process.

11 Q. And then -- and then why did you
12 decide to terminate that process in February of
13 2017?

14 A. I'm trying to remember. Would that
15 have been in the February of 2017 minutes? Is
16 that in here?

17 Q. It's not. Mr. Aliff testified it was
18 because it was some uncertainty involved with
19 Toshiba and Westinghouse, and that's why the board
20 decided to terminate those discussions.

21 A. Yes.

22 Q. Does that refresh your recollection?

23 A. I mean, that's my recollection. I was
24 thinking if the minutes were here I would look at
25 that. But it was the, as you stated earlier, just

1 the overall uncertainty from a value standpoint,
2 didn't seem to be a prudent time to be going to
3 market.

4 Q. And then -- and then turning over to
5 the -- the May 5th minutes, the next set of
6 minutes here.

7 A. Yeah.

8 Q. Mr. Marsh talks about the meeting that
9 he had with Tom Farrell and then Mr. -- Mr.
10 Farrell presented Mr. Marsh with a proposal with
11 respect to transactions whereby Dominion would
12 acquire the company, and then Mr. Marsh summarized
13 for the term -- for the board the terms of the
14 proposal that had been presented to him.

15 Do -- do you recall -- did Mr. Marsh
16 tell you what the -- the -- the general price
17 range that Dominion was proposing at the time?

18 A. I -- I don't recall at that time any
19 specifics of the financial side of that. I just
20 recall that it was a -- it was a serious proposal
21 that had been given -- it was clear that Dominion
22 had put a lot of thought into it, and it impressed
23 us all that they had put meat on the bone, if you
24 will, as opposed to just saying, hey, we've got an
25 interest in some form of strategic partnership

1 A. And that's on SCANA's?

2 Q. Yes.

3 A. No.

4 Q. So at the meeting -- going back to the
5 minutes, which was Exhibit 16.

6 A. So we're back in the minutes?

7 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. And turning over to Page 8 of the

21 document, which is the July '17 minutes.

22 MR. WISSBROECKER: While you look at

23 those, why don't we just go off the record and

24 change the tape quick so we get that done.

25 VIDEOGRAPHER: Going off the record.

1 BY MR. WISSBROECKER:

2 Q. So it looks like Mr. Marsh met with --
3 with Dominion at Dominion's request. Had -- had
4 the board authorized Mr. Marsh to engage in any
5 further sale discussions at this point?

6 A. No. And it -- it appears that that
7 happened at this board meeting.

8 Q. So after the fact, after Mr. Marsh met
9 with Dominion, then the board authorized him to
10 meet with Dominion?

11 A. Well, he informed us that he was
12 meeting with them. But you asked did we authorize
13 him to negotiate, and the answer is, no, we did
14 not.

15 Q. Okay. So this -- this meeting took
16 place without the board's authorization?

17 A. No. The meeting was at Mr. Farrell's
18 request. We were made aware that he was going to
19 have the meeting.

20 Q. Okay. Well, it took place before the
21 board meeting. So that took place on October 1st?

22 A. Right.

23 Q. This meeting is October 6th?

24 A. Right.

25 Q. So my question was had the board

1 authorized Mr. Marsh to engage in this meeting
2 that happened before this board meeting?

3 A. You -- you -- did they -- did the
4 board authorize him to engage in the meeting?
5 Does that mean did we give him permission to go to
6 the meeting?

7 Q. I guess, yeah. I mean, because you
8 had previously said don't reach out to Dominion or
9 other buyers --

10 A. Yeah, well, Dominion reached out to
11 us.

12 Q. Okay. But was he authorized to -- to
13 participate in that meeting, to actually hold that
14 meeting?

15 A. You know, he's CEO of the company. We
16 didn't -- that I'm aware of, it was not an issue
17 of permission or not to have a meeting with
18 another CEO.

19 Q. About a strategic combination? So the
20 board had told -- had told Mr. Marsh or Mr. Marsh
21 had actually said let's not reach out and the
22 board agreed, and so then he does meet with
23 Dominion --

24 A. Yes.

25 Q. -- without -- without the board having

1 authorized the process to start up again, right?

2 A. That -- that happened after -- at this
3 October 6th meeting.

4 Q. And what -- what was -- what was
5 different about the company's status and the
6 company's problems at that point that -- that --
7 that -- that the board thought it was now -- now
8 appropriate to engage in -- in sale discussions?

9 A. Well, one, the abandonment decision
10 had been made. The uncertainty around what was
11 going to happen with the public service
12 corporation and whether we were going to be able
13 to -- the BLRA -- the BLRA was going to stick or
14 not and, you know, it was mounting. It was
15 starting to build by October that we had further
16 uncertainties, and I think that's -- that's it.

17 Q. There was no -- there are no -- no
18 further certainty around valuation of the company
19 though, right?

20 A. There was not certainty other than
21 what the stock was trading for and, at this point,
22 what Dominion was -- in a non-solicited way was
23 proposing.

24 Q. But -- but there was no way to
25 accurately value what the -- the real or